

Mustaq Ali Khan (Dead) By Lrs.

Vs

Dy. Director of Consolidation and Others

Civil Appeal No. 788 of 1975

(K. Ramaswamy, S. B. Majmudar JJ)

30.11.1995

ORDER

1. This appeal speaks of several events that have taken place during the pendency of the litigation. About 40.99 acres comprising of Plots No. 63, 66, 96, 34, 53, 37 and 102 situated in Village Lakhimpur, Pargana Suar, in former Rampur State are the subject-matter of this appeal. It is the claim of the appellant that his son is disabled Sirdar. Consequently, he had sub-leased the properties to Respondents 3 to 10. On his demise on 21-10-1954, the appellant - his father succeeded to the estate. He also is a disabled person. The U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short 'the Act') was brought into force in the State of Rampur with effect from 26-1-1956. The respondents claimed the status as Adhivasis as they were cultivating the land and have Bhumiswami rights. The appellant claimed the Asami right. The Assistant Settlement Officer by his proceedings dated 30-9-1963 negated the claims of the appellant and held that the respondents became Adhivasis under the Act. On appeal, the Assistant Settlement Officer held that the appellant is a disabled person and that, therefore, he became the Asami. On revision, the Deputy Director (Consolidation) while holding that the appellant is a disabled person following the judgment of the Allahabad High Court in *Maya v. Raja Dulajji* held that the appellant is not entitled to the status as a disabled person. When the matter was carried in writ petition, the High Court following the Full Bench judgment in *Maya* case upheld the order of the Deputy Consolidation Officer by his order in Writ Petition No. 627 of 1971 dated 11-8-1971. Leave has been granted by this Court. This appeal has come up for hearing.

2. So far as the legal position is concerned, it is now settled by the decision of this Court in *Richpal Singh v. Desh Raj Singh*. At p. 378, it is held that Shrimati Ram Kali was a disabled person on 9-4-1946, Dan Sahai (successor-in-interest of Smt. Ram Kali) was also a disabled person, the landholder on the date of vesting, who incidentally happened to be Dan Sahai, would be entitled to the benefit of Section 21(1)(h) and the respondents (successors of Uttam Singh and Murli Singh) would remain Asamis and cannot be said to have become Sirdars. It is also not in dispute that a later bench of five Judges of the Allahabad High Court in *Dwarika Singh v. Dy. Director of Consolidation* had also taken the same view which was noted by this Court and approved of the corrections thereof. It would thus be seen that a disabled person and a successor-in-interest who is also disabled is also Asami and, therefore, he is Sirdar.

3. The question is whether this is a fit case for our interference under Article 136 of the Constitution. It is not in dispute that the respondents have been in possession and enjoyment for over 45 years and claiming the status to be as Adhivasis and thus entitled to claim Bhumidhar rights under the Act. They are all small holders and they have been in possession and enjoyment cultivating the land for their livelihood. Considered from this perspective, equity would be worked

out. Accordingly, we direct the Deputy Director (Consolidation) to determine the prevailing market rate of the lands as on 26-2-1970, the date on which the Consolidation Officer has upheld the claim of the respondents as Adivasis. The respondents are directed to pay half of the market value to the appellant and on payment declare the respondents as Bhumidars and action accordingly be taken.

4. The appeal is accordingly disposed of. No costs.